

### REMARKS

Applicants wish to thank the Examiner for considering the present application. In the Office Action dated January 30, 2003, claims 9-13 are pending in the application. Claims 14-23 have been withdrawn from consideration.

Claims 9, 12, and 13 stand rejected under 35 U.S.C. §102(e) as being anticipated by *Kraus* (US 6,198,869). Applicants respectfully traverse.

Claims 9, 12, and 13 also stand rejected under 35 U.S.C. §102(a) as being anticipated by *Novartis* (WO 98/227999). The applicants note that the PCT publication is written in German. The *Kraus* reference claims priority to the *Novartis* reference. It is believed that the *Novartis* reference corresponds directly to the *Kraus* reference and therefore these two references will be discussed together as the *Kraus* reference.

For a proper §102 rejection, each and every element of the claims must be found in the reference. Applicants respectfully submit that each and every element of claims 9, 12, and 13 are not found in the *Kraus* reference. Claim 9 is directed to an analysis device that has a housing, one glass slide member positioned within the housing, and an elastomer member that is positioned within the housing wherein the housing urges the elastomer member into sealing arrangement with the glass slide member. The elastomer member has at least one channel thereon, at least one inlet port, and at least one outlet port so that materials entering the inlet port are transported through the device and the channel and out through the outlet port. The Examiner alleges on page 3 of the Office Action that the *Kraus* reference discloses an "analysis device comprising a housing, at least one glass slide member positioned in the housing, an elastomer member positioned in the housing, said housing urging the elastomer member into a sealing arrangement with the at least one glass slide member." The Examiner cites Col. 3, line 62 through Col. 4 line 25, and Col. 7, lines 30-61, for this proposition. Applicants admit that the *Kraus* reference teaches a flow cell that has an inlet channel 2, and an outlet channel 3, and a recess 6. As mentioned in Col. 7, the flow cell may be formed of PDMS. The device described in the *Kraus* reference is different than that of the present invention. The *Kraus* reference is used for optical analysis of fluids within the channels described above by using an optical waveguide 7.

As described in lines 53-55, "The relatively thin waveguide 7 is applied to a mechanically stable substrate 8 made, for example, of glass or a polycarbonate." As described in line 40, "the flow cell 1 is mounted by self-adhesion on a waveguide 7." Thus, there is no sealing between the elastomer member and the glass slide.

The *Kraus* reference has several differences from that recited in claim 9. Namely, claim 9 recites "a housing." No teaching or suggestion is found in the *Kraus* reference nor does the Examiner point to any specific teaching or suggestion for the use of a housing. Further, claim 9 recites "at least one glass slide member positioned within the housing." Since no housing is taught or suggested in the *Kraus* reference, no glass slide member may be positioned within the housing. Also, claim 9 recites, "said housing urging said elastomer member into sealing arrangement with at least one glass slide member." Since no housing is present no teaching or suggestion is found for the housing urging the elastomer member into sealing arrangement with the glass slide member.

Because each and every element of claim 9 is not recited in the *Kraus* reference, applicants respectfully request the Examiner for a reconsideration of this rejection. Likewise, claims 12 and 13 are further limitations of claim 9 and are believed to be allowable for the same reasons set forth above.

Claims 9-13 also stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Wilding et al* (US 5,928,880) in view of *Novartis*. The Examiner states that *Wilding et al* teaches an analysis device comprising a housing (Col. 9, lines 43-57), "at least one glass slide member positioned in the housing, an elastomer member positioned in the housing, said housing urging the adhesive member into sealing arrangement with the at least one glass slide member"... . Applicants remind the Examiner of the prosecution of Serial No. 09/321,170 which is now U.S. Patent 6,198,869. In the reasons for allowance the Examiner states, "Wilding et al ... do not teach said devices wherein said elastomer member is positioned in said housing wherein said housing urging elastomer member into a sealing arrangement with said glass slide." Also, as mentioned above, the *Novartis* reference is the *Kraus* reference and it has several drawbacks as described above. Therefore, applicants respectfully request the Examiner for reconsideration of this rejection.

In light of the above remarks, applicants submit that all rejections are now overcome. The application is now in condition for allowance and expeditious notice thereof is earnestly solicited. Should the Examiner have any questions or comments which would place the application in better condition for allowance, the Examiner is respectfully requested to call the undersigned attorney.

Please charge any fees required in the filing of this amendment to Deposit Account 50-0476.

Respectfully submitted,  
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